

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

NTS Services, Inc.	:	
-vs-	:	
Gallatin River Communications, LLC	:	
d/b/a CenturyLink	:	
	:	10-0637
Formal Complaint and Request for	:	
Declaratory Ruling pursuant to	:	
Sections 13-515, and 10-108 of the	:	
Illinois Public Utilities Act.	:	

ORDER

By the Commission:

On November 8, 2010, NTS Services, Inc., ("NTS") filed a Complaint with the Illinois Commerce Commission ("Commission") against Gallatin River Communications, LLC d/b/a CenturyLink ("CenturyLink") pursuant to Sections 13-515 and 10-108 of the Illinois Public Utilities Act ("Act"), alleging that CenturyLink's charges and policies violate the terms of the current interconnection agreement. NTS also alluded in its Complaint to a request for emergency relief under Section 13-515(e) of the Act. 220 ILCS 5/13-515(e).

On November 9, 2010, the Administrative Law Judge ("ALJ") issued a ruling denying NTS emergency relief for failure to comply with the provisions of 83 Ill. Adm. Code 766.110, "Emergency Relief Filing Requirements" which mandates that the complainant attach a draft order that complies with the requirements for an order for emergency relief and pursuant to Section 13-515(e) of the Act which requires complainant to request an order for emergency relief in its Prayer for Relief. On that same day, pursuant to notice as required by law and the rules and regulations of the Commission, the ALJ scheduled a prehearing conference for November 23, 2010 at its offices in Springfield, Illinois.

On November 19, 2010, the Staff of the Commission ("Staff") and CenturyLink each filed a motion to dismiss the Complaint without prejudice. Staff asserted the Complaint should be dismissed based on NTS' failure to follow jurisdictional and procedural requirements under Sections 13-515 and 10-108 of the Act but formed no opinion regarding the merits of the claims enunciated by NTS in its Complaint. CenturyLink concurred with assertions contained in Staff's motion.

On November 23, 2010, prior to the hearing, NTS filed its motion to dismiss. In its motion, NTS asserted that in order to conserve resources hereto and in order to eliminate any claim of error, and so that NTS could litigate this matter and reach a just conclusion based upon the substantive issues of the case, NTS requested its Complaint be dismissed without prejudice.

Section 13-515(g) of the Act directs the Commission to assess the parties for all of the Commission's costs of investigation and conduct of the proceedings brought under Section 13-515 including, but not limited to, the prorated salaries of Staff, attorneys, administrative law judges, and support personnel, dividing the costs according to the resolution of the complaint. Given the circumstances of this case, the Commission finds that NTS must be assessed Commission costs related to this Complaint.

With regard to attorney's fees and costs, the Commission finds that each party should bear its own attorney's fees and costs.

A copy of the Proposed Order dismissing the Complaint without prejudice and assessing Commission fees to NTS was served on the parties.

On December 30, 2010, NTS filed a Brief on Exceptions to the Proposed Order. NTS takes exception to the fees and costs conclusion of the Proposed Order, asserting that the assessment of costs should be apportioned only after the Commission has conducted an investigation, conducted proceedings, and made a determination as to the relative merits of the respective arguments of Complainant and Respondent. On January 7, 2011, Staff filed its Reply to Briefs on Exceptions supporting the Proposed Order imposing fees and costs to NTS, asserting that the assessment of costs is mandatory and that there is no basis for a waiver of such costs in this case.

The Commission, after reviewing the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the parties to this case and the subject matter of this proceeding;
- (2) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (3) the Motions to Dismiss filed by the parties should be granted;
- (4) pursuant to Section 13-515(g) of the Act, NTS Services, Inc. is directed to pay the Commission's costs;
- (5) each party must bear its own attorney's fees and costs.

IT IS THEREFORE ORDERED that the Motions to Dismiss filed by Staff, CenturyLink and NTS are hereby granted and the complaint filed by NTS Services, Inc., on November 8, 2010, be and is hereby dismissed without prejudice.

IT IS FURTHER ORDERED that Commission costs of this proceeding must be assessed against NTS Services, Inc. in accordance with Findings (4) and (5) above.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code Part 200.800, this Order is final and is not subject to the Administrative Review Law.

By order of the Commission this 9th day of February, 2011.

(SIGNED) MANUEL FLORES

Acting Chairman